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HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND
HONOURABLE SRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION Nos:6268 and 1485 of 2005

DATED: 08-06-2007

W.P.No.6268 of 2005:

Between:

Mohd.Qasim

..... PETITIONER

AND

1. Special Court constituted under the A.P.Land Grabbing (Prohibition) Act, 1982 at Hyderabad and another

.....RESPONDENTS

W.P.No.1485 of 2005:

Between:

B.Vijayender Reddy

..... PETITIONER

AND

1. Special Court constituted under the A.P.Land Grabbing (Prohibition) Act, 1982 at Hyderabad and another

.....RESPONDENTS

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COMMON ORDER:(per Hon'ble Sri Justice B.Prakash Rao)

Since these two writ petitions arise out of common proceedings and involve common question, they have been taken up together for disposal.

The petitioner in W.P.No.1485 of 2005 is respondent No.1 before the Special Court and whereas the petitioner in other W.P.No.6268 of 2005 is the purchaser from respondent No.9 before the Special Court in the LGC. Hence, after obtaining the leave filed the writ petitions challenging the very same order.

Heard Sri C.P.Reddy, learned Senior Counsel appearing for the petitioner in W.P.No.1485 of 2005 and Sri P.Roy Reddy, learned counsel for the petitioner in W.P.No.6268 of 2005 and the learned Government Pleader for Revenue (Assignments).

After considering the submissions made on behalf of the petitioners and also on perusal of the material on record, the short question which arises for consideration in these two writ petitions is that whether in exercise of *suo motu* powers as conferred under Section 8 of the A.P. Land Grabbing (Prohibition) Act whether the present case as taken up by the Special Court is maintainable having regard to the earlier proceedings which have become final.

The undisputed facts are that in the earlier round in respect of

the very same subject matter of the property, the State Government has initiated the proceedings under the provisions of the A.P. Land Encroachment Act by issuing notices to the petitioner in W.P.No.1485 of 2005 and other concerned. The said proceedings are ultimately resulted in challenge in W.P.No.5566 of 1987 where this Court quashed the said proceedings and held that appropriate remedy for the Government is to sue against the respondents for declaration of the title. The said order was also confirmed by the Division Bench of this Court in W.A.No.68 of 1990. There is no further challenge to those proceedings and thus the orders and the observation as made by this Court in those proceedings as initiated under the provisions of the Land Encroachment Act have become final. In spite of the specific observation as made by this Court in those proceedings, it is now represented that the Government did not file any suit for seeking declaration before any Court. Therefore, having regard to the same, the present proceedings are *suo motu* taken up by the Special Court itself in pursuance of a newspaper report which appeared in daily newspaper Eenadu dated 15-09-1997. Accordingly, the said proceedings are only unsustainable and barred by not only the principles of *estoppel* and also *res judicata*.

By taking the chequered events and also the facts and circumstances into consideration and even on perusal of the entire proceedings in the order which is under challenge, there is no

dispute to the aforesaid facts as mentioned in regard to the proceedings initiated under the provisions of Land Encroachment Act and the same has been challenged subsequently and the said orders have become final. Admittedly, no suit has been filed by the State Government. Further, at the instance of the Special Court in *suo motu* exercise of the power as provided under Section 8 of the A.P.Land Grabbing (Prohibition) Act the proceedings are initiated by recording the facts and a note was placed before the Chairman by the office and after perusing the said office note the officer directed to place the matter before the Court and having regard to the said allegations as contained in the news item Special Court took cognizance of the case. On the face of it, the procedure as followed also is in direct violation of the mandatory procedure as contemplated under Rule 5 of the A.P. Land Grabbing Act. It is specifically contemplated that it is only where a Chairman or any member of the Special Court desires that any case should be taken cognizance of *suo motu*, he may record a statement of facts within his knowledge and place it before the Special Court. Whereas on perusal of the recording it is seen that there is absolutely no mention nor any narration of any statement of facts. Therefore, except the news item and office note there is no sufficient complaint as mandatory under the provisions of the said Act.

That apart, even as stated above since no declaration has been sought in regard to the title and the orders in the writ appeal by

the Division Bench of this Court dated 30-09-1990 having become final and the proceedings as stated to be initiated in pursuance of the said news item on 15-09-1997 as initiated in the year 1997 are totally misconceived apart from the bar from the principle of *estoppel* and also *res judicata*.

Anyway, the Government cannot take advantage of any such *suo motu* initiation of powers for the purpose of relief under Section 8 of the said Act. Necessarily, the Government ought to have filed declaration in support of their claim for title. In the absence thereof, the Government or any party cannot take advantage of *suo motu* proceedings and try to seek any relief as such. Whereas in this case though an elaborate enquiry has been conducted and on a consideration thereof the Special Court has found that the petitioners along with respondents therein are land grabbers, prima-facie, we are of the view that having regard to the earlier proceedings directing the Government to file a comprehensive declarative suit of title, it is not for them to take any advantage of these proceedings, and entire proceedings from the inception as such are totally unsustainable and not maintainable.

Having regard to the aforesaid reasons, we are not going into the merits nor is necessary also as long as the question as to how such proceedings are maintainable or any relief could be granted in favour of the Government declaring the petitioners as land grabbers

is decided. It is not necessary to go into the same.

In view of the same, the Writ Petitions are accordingly allowed. The orders challenged in both the writ petitions are set aside. No order as to costs.

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B.PRAKASH RAO, J

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G.BHAVANI PRASAD, J

08th June, 2007
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